IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13576 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDULBHAI DAOODBHAI MUMAN - Petitioner(s)
Versus
DY. COLLECTOR & 1 - Respondent(s)

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Appearance :
MR SUNIL K SHAH for Petitioner,
MR M R MENGDEY ASST.GOVERNMENT PLEADER for Respondent Nos.1 & 2,
NONE for Respondent No. 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/06/2007

ORAL JUDGMENT

1. Mr.Sunil Shah, learned counsel for the petitioner and Mr.M.R. Mengdey, learned Assistant Government Pleader for the respondent Nos.1 and 2. None for the respondent

No.3 though the name of Mr.S.V. Raju, learned counsel is shown in the Daily Board.

2. The petitioner, being aggrieved by the order dtd.11/10/1994 passed by the learned Secretary (Appeals), Revenue Department on 11/10/1994 in Case No.SRD/CON/BNS/14 of 1993, confirming the order dtd.27/8/1993 passed by the learned Collector, Palanpur, in Case No.289 of 1993, is before this Court with the submission that initiation of the proceedings was already delayed and the petitioner had paid some good price for purchasing the property. It is submitted that in absence of a notice under sub-section (2) of section 6 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (“Fragmentation Act” for short), learned Dy. Collector could not take up the matter in suo-motu revision, nor could set aside the entry which was made in the year 1980, nor could he annul the sale deeds of the year 1978 and 1980.

3. From the petitioner's say, it would appear that the agricultural land being Survey No.5/2 of Juni Sendhni Tal.Vadgam, District Banaskantha, was irrigated land and was owned by one Becharbhai.

4. The petitioner had purchased 1 Acre and 13 Gunthas and

half share in the well on 20/9/1978. However, the other half of the land was purchased by the petitioner on 18/3/1980. Entry to the effect was made on 1/4/1980 in the revenue record. According to the petitioner, Dy.Collector, Palanpur issued notice to the petitioner on 6/7/1993 calling upon him to show cause as to why the sale effected in his favour be not annuled and the possession be not restored back in favour of the original holder. Vide order dtd.27/8/1993, the Dy.Collector occasioning a fragment, declared the sale to be void under sec.9(1) of the Fragmentation Act and imposed fine of Rs.250=00 on the original owner. As the revision filed by the petitioner before the Special Secretary (Appeals), Revenue Department was dismissed on 11/10/1994, the petitioner has come to this Court.

5. It is not in dispute before me that Survey No.5/2 was noted as fragment. Once the petitioner purchased a part of the fragment, provisions of the Fragmentation Act would immediately come into operation. For purchasing a fragment or for purchasing a land which may cause Fragmentation, the petitioner was required to obtain necessary permission from the concerned officer / revenue authority. He having not done that clearly

violated the provisions of the law. On one side, this is the finding against the interest of the petitioner and on the other hand, respondent No.3 namely Valabhai Jivabhai – grand son of Becharbhai accuses the petitioner of suppressing material facts from this Court. He submits that various civil suits were filed even before the said sale and the respondent No.3 had filed Civil Suit No.174 of 1980 against Becharbhai and the present petitioner namely Abdulbhai Daoodbhai Muman (Machhalia) praying for grant of an injunction. According to him, injunction application was rejected by the learned trial court, but, however, in Misc.Appeal No.42 of 1980 at the instance of the respondent No.3, the appeal was allowed and the injunction was granted in favour of the respondent No.3. It is also submitted that the said injunction was challenged before this Court in Civil Revision Application No.203 of 1981, but, the petitioner had withdrawn the said revision application on 15/4/1988. The respondent No.3 submits that he continues to be in possession of the property and the petitioner is not entitled to any relief.

6. Though the State Government has not filed any affidavit , but, Mr.Mengdey, learned Assistant Government Pleader for the respondent Nos.1 and 2, however, submits that

there is no error apparent on the face of the record and the order passed by the Dy.Collector and confirmed by the Secretary (Appeals), Revenue Department, are in accordance with law. His submission is that if a particular parcel of land is recorded as fragment, then there is no escape from the consequences.

7. In the present matter, though the learned counsel for the petitioner places his strong reliance upon a Division Bench Judgement of this Court in case of Valjibhai Jagjivanbhai Vs. State of Gujarat, 2005 (3) G.L.R. 1852 to contend that proceedings should have been initiated within a reasonable period, but in the opinion of this Court, the said judgement would not help and assist the petitioner, because, the parties were already daggers drawn in the present matter and the respondent No.2 had already secured an injunction in his favour. If the respondent No.3 is in possession of the property, then the petitioner would not be allowed to say that the entry made in the record of rights would be deemed to be a correct entry. On one side, entry favours the petitioner but on the other, the order passed by the competent court stairs in the eyes of the petitioner. It would always be prudent to rely upon a judicial order, then on an entry

made by some Talati, some Clerk or some sub-ordinate revenue officer.

8. Section 6(2) of the Fragmentation Act provides for notice of an entry made under sub-section (1) of section (6) of the Fragmentation Act.

9. In the present case, the authorities have found that proper proceedings were drawn and proper notices were issued to the petitioner. As the petitioner is not in possession of the property and the mental condition of Becharbhai is still in dispute, I do not think that the authorities were unjustified in directing deletion of the entry. It is, however, made clear that this Court is not making any observation in relation to the rights of the respondent No.3 against the Government.

10. The petition is dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

11. Prayer made by the learned counsel for the petitioner for continuation of the interim relief, is rejected.

(R.S. GARG, J.)

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